

(Published in *The Derby Weekly Informer* on December 16, 2009)

ORDINANCE NO. 2001

A ORDINANCE AUTHORIZING THE EXECUTION OF AN ESCROW TRUST AGREEMENT TO PROVIDE FOR THE PAYMENT OF THE OUTSTANDING GENERAL OBLIGATION BONDS SALES TAX BONDS, SERIES 2003-A OF THE CITY OF DERBY, KANSAS; REQUESTING THE SECRETARY OF REVENUE TO TERMINATE THE ONE-HALF PERCENT (1/2%) CITYWIDE RETAILERS' AQUATIC PARK SALES TAX APPROVED BY THE ELECTORS OF THE CITY AT AN ELECTION HELD ON NOVEMBER 5, 2002; AND AUTHORIZING CERTAIN ACTIONS TO BE TAKEN IN CONJUNCTION THEREWITH.

WHEREAS, pursuant to Resolution No. 26-2002 of the City of Derby, Kansas (the "City") and K.S.A. 12-187 *et seq.* (the "Act"), as amended, a special election was duly held in the City on November 5, 2002, on the question of imposing a special one-half percent (1/2%) Citywide retailers' sales tax (the "Aquatic Park Sales Tax") for the purpose of financing the acquisition of a site and the construction thereon of a municipal aquatic park facility and related appurtenances thereto (the "Derby Family Aquatic Park Project") and payment of operating and maintenance costs thereof and to issue sales tax/general obligation bonds of the City in a principal amount of not to exceed \$7,000,000 payable from and secured by the proceeds of the Aquatic Park Sales Tax, and if not so paid, from unlimited ad valorem taxation within the City (the "General Obligation Sales Tax Bonds"), which sales tax shall commence as soon as may be permitted by the Act (April 1, 2003), and shall terminate upon the earlier of the following: (a) accumulation of sufficient revenues to provide for: (i) payment of the principal of and interest on the General Obligation Sales Tax Bonds and (ii) provision of an operation and maintenance reserve of \$1,500,000; or (b) December 31, 2016, and it was found and determined that more than a majority of the qualified electors of the City voting on the question had voted in favor of the issuance of said General Obligation Sales Tax Bonds for the purpose aforesaid; and

WHEREAS, pursuant to Ordinance No. 1781 and Resolution No. 02-2003, as subsequently amended by Resolution No. 3-2005 and Resolution No. 11-2006 (collectively the "Series 2003-A Bond Resolution"), the City has heretofore issued \$7,000,000 of its General Obligation Sales Tax Bonds, Series 2003-A to pay the costs of the Derby Family Aquatic Park Project and related expenses (the "Series 2003-A Bonds"); and

WHEREAS, the City has not heretofore issued any Additional Bonds (as defined in the Series 2003-A Bond Resolution); and

WHEREAS, the Series 2003-A Bond Resolution provides, in substance, that when all costs associated with the financing of the construction of the Derby Family Aquatic Park Project have been paid (including the payment of the debt service requirements on the Bonds, or provision has been made in accordance with the Series 2003-A Bond Resolution) and the operation and maintenance reserve account shall contain an amount equal to \$1,500,000, the City will provide for early redemption of the Series 2003-A Bonds and terminate the Aquatic Park Sales Tax; and

WHEREAS, the Series 2003-A Bond Resolution provides that the covenants and requirements contained in the Series 2003-A Bond Resolution and the rights of the Owners of the Series 2003-A Bonds under the Series 2003-A Bond Resolution are terminated if sufficient funds are placed in an escrow fund comprised of cash or United States Government Obligations, or both, in accordance therewith; and

WHEREAS, sufficient funds are held in funds and accounts held under the Series 2003-A Bond Resolution to provide for an escrow fund sufficient for payment of the Series 2003-A Bonds in accordance with the Series 2003-A Bond Resolution and the termination of the Aquatic Park Sales Tax on December 31, 2009; and

WHEREAS, the City duly authorized, pursuant to K.S.A. 12-6a01 *et seq.* certain public infrastructure improvements to be made to the Glen Hills 2nd Addition to the City (the "Improvements") that benefited the land on which the Derby Family Aquatic Park Project is located and the levying of special assessments on such land associated with the costs of the Improvements (the "Special Assessments"); and

WHEREAS, the City has been paying the annual Special Assessments from revenues derived from the collections of the Aquatic Park Sales Tax and desires to place in escrow sufficient funds held the funds and accounts established by the Series 2003-A Bonds Resolution to make payments of such Special Assessments in the future; and

WHEREAS, it is deemed advisable to provide for the defeasance of the Series 2003-A Bonds and payment of the Special Assessment by the execution of an Escrow Trust Agreement between the City and the Escrow Agent named therein.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS, AS FOLLOWS:

Section 1. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in the Series 2003-A Bond Resolution, the following words and terms as used in this Ordinance shall have the following meanings:

"Aquatic Park Sales Tax" means the one-half percent (1/2%) retailers' sales tax collected within the boundaries of the City, which was authorized under the Act by the special election held on November 5, 2002, and commenced on April 1, 2003.

"Bond Payment Date" means any date on which principal of or interest on any Series 2003-A Bond is payable.

"City" means the City of Derby, Kansas.

"Debt Service Account" means the Debt Service Account created by the Series 2003-A Bond Resolution for payment of principal of and interest on the Series 2003-A Bonds.

"Debt Service Requirements" shall mean the required payments of principal, premium, if any, and interest on the Series 2003-A Bonds in accordance with the terms and provisions of the Series 2003-A Bond Resolution.

“**Escrow Fund**” means, collectively, the Escrow Account – Bonds and Escrow Account – Special Assessments.

“**Escrow Account - Bonds**” means the City of Derby, Kansas, Escrow Account for General Obligation Sales Tax Bonds, Series 2003-A Bonds, created pursuant to the Escrow Trust Agreement.

“**Escrow Account – Special Assessments**” means the City of Derby, Kansas, Escrow Account for Special Assessments, created pursuant to the Escrow Trust Agreement.

“**Escrow Trust Agreement**” means the Escrow Trust Agreement, dated as of December 15, 2009, between the City and the Escrow Agent.

“**Escrow Agent**” means UMB National Bank of America, Wichita, Kansas, and its successors and assigns.

“**Governing Body**” means the Governing Body of the City of Derby, Kansas.

“**Operation and Maintenance Reserve Account**” means the Operation and Maintenance Reserve Account created by the Series 2003-A Bond Resolution.

“**Operations Account**” means the Operations Account created by the Series 2003-A Bond Resolution.

“**Project**” means the acquisition and construction of the Derby Family Aquatic Park Project and related appurtenances thereto referred to in the Series 2003-A Bond Resolution.

“**Redemption Date**” means June 1, 2011.

“**Revenue Fund**” means the Sales Tax Revenue Fund created by the Series 2003-A Bond Resolution.

“**Revenues**” means all sales tax revenues received by the City from the collection of the Aquatic Park Sales Tax.

“**Secretary**” means the Secretary of the Department of Revenue of the State of Kansas.

“**Series 2003-A Bond Resolution**” means collectively Ordinance No. 1781 and Resolution No. 02-2003, as subsequently amended by Resolution No. 3-2005 and Resolution No. 11-2006, of the City, which authorized the Series 2003-A Bonds.

“**Series 2003-A Bonds**” means the City's General Obligation Sales Tax Bonds, Series 2003-A, in the aggregate principal amount of \$7,000,000, and currently Outstanding in an aggregate principal amount of \$4,825,000.

“**State**” means the state of Kansas.

Section 2. Authorization of Escrow Trust Agreement. There is hereby authorized to be created in the custody of the Escrow Agent the Escrow Fund. The form of the Escrow Trust Agreement substantially in the form presented to the Governing Body this date is hereby approved. The Mayor and

Clerk are hereby authorized to execute the Escrow Trust Agreement in substantially such form with such changes or modifications as are approved by the City Attorney as necessary to accomplish the purposes of this Ordinance.

Section 3. Transfer and Administration of Escrow Funds. Simultaneously with execution of the Escrow Trust Agreement, there shall be transferred from the Revenue Fund, the Debt Service Account, and the Bond Redemption Account, to the Escrow Agent for deposit in the Escrow Account – Bonds, sufficient funds to provide for payment of the Debt Service Requirements on the Outstanding Series 2003-A Bonds on each Bond Payment Date and the Redemption Date, and the payment of costs associated with the establishment of the Escrow Trust Agreement (approximately \$5,050,000). In addition, there shall be transferred from funds and accounts held under the Series 2003-A Bonds Resolution, to the Escrow Agent for deposit in the Escrow Account – Special Assessments, sufficient funds to provide for payment of the Special Assessments (approximately \$315,000). In the event that sufficient Revenues have not been received by the City from the State to provide for the transfers set forth in this *Section 3*, the City shall transfer from other available funds the deficiency and replenish such amounts from collections of Revenues received by the City from the State after the establishment of the Escrow Fund. Moneys in the Escrow Fund shall be administered in accordance with the provisions of the Escrow Trust Agreement.

Section 4. Transfer of Funds to Operation and Maintenance Reserve Account. After providing for the transfer required by *Section 3* hereof, all other moneys and investments held in funds accounts established in the Series 2003-A Bond Resolution (other than the Operations Account and Operation and Maintenance Reserve) and Revenues received by the City from the State after the funding of the Escrow Fund shall be transferred to the Operation and Maintenance Reserve Account. Notwithstanding the termination of the covenants, requirements and rights under the Series 2003-A Bond Resolution as a result of the funding of the Escrow Fund, amounts remaining in or transferred to the Operations Account and Operation and Maintenance Reserve Account shall be applied solely and only for the purposes set forth in the Series 2003-A Bond Resolution.

Section 5. Termination of Aquatic Park Sales Tax. Upon deposit of the funds described in *Section 3* hereof into the Escrow Account – Bonds, provision will have been made for payment of the Debt Service Requirements of the Series 2003-A Bonds in accordance with the Series 2003-A Bond Resolution. The Secretary is hereby requested to cause the termination of the Aquatic Park Sales Tax at the earliest possible date permitted by the provisions of the Act, which is anticipated to be December 31, 2009, and the Clerk is hereby directed to cause a copy of this Ordinance to be forward to the Secretary.

Section 6. Severability. In case any one or more of the provisions of this Ordinance shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Ordinance, but this Ordinance shall be construed and enforced as if such illegal or invalid provision had not been contained herein. In case any covenant, stipulation, obligation or agreement contained in this Ordinance shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 7. Further Authority. The officers of the City, including the Mayor and Clerk, shall be and hereby are authorized and directed to: (a) execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance; and (b) to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.


Section 8. Governing Law. This Ordinance shall be governed exclusively by and constructed in accordance with the applicable laws of the State.

Section 9. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body, approval by the Mayor and publication in the official City newspaper.

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PASSED by the governing body of the City of Derby, Kansas on December 8, 2009, and **APPROVED AND SIGNED** by the Mayor.

(SEAL)



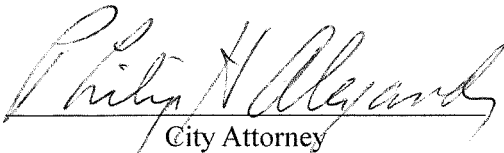
Mayor

ATTEST:



Clerk

APPROVED AS TO FORM ONLY.



City Attorney

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